

BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

IN THE MATTER OF:	)	
	)	
Ian D. MacGillivray, D.O.,	)	FINDINGS OF FACT,
Applicant for Board license.	)	CONCLUSIONS OF LAW
<hr/>	)	AND ORDER

INTRODUCTION: Hearing was conducted before the Board of Osteopathic Examiners in Medicine and Surgery (hereinafter "Board") on February 2, 1996 pursuant to the requirements of A.R.S. § 41-1065. Ian D. MacGillivray, D.O., (hereinafter "Applicant") appeared for the hearing and was represented by Stanley D. Murray, Attorney. This matter came before the Board for hearing at the request of the Applicant due to prior notice of denial of his Board license application. Based upon the documentary evidence submitted to the Board and the testimony received during the administrative hearing, the Board issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. On or about June 24, 1994 the applicant submitted and the Board received his application for license to practice as an osteopathic physician in the State of Arizona.

2. Applicant was previously a licensee of the Board and holder of license No. 1095 for the practice of osteopathic medicine; however, pursuant to stipulated Consent Order dated October 19, 1988, Applicant's previous Board license was revoked. The Board's Consent Order was based upon the

Applicant's criminal conviction for felony offenses arising out of and related to the practice of medicine.

3. The Board's Consent Order, at page 4, reads in part as follows:

IT IS FURTHER ORDERED that in the event that each and every felony conviction entered against Dr. MacGillivray in CR 164-338 is set aside on appeal, license number 1095 shall be fully reinstated to Dr. MacGillivray and the revocation set forth herein shall be vacated. This provision respecting reinstatement of Dr. MacGillivray's license in the event the convictions are set aside on appeal shall only be operative if all 12 convictions are set aside on appeal; affirmance on appeal of any single conviction, or more than one conviction but less than all of the convictions originally entered, shall be sufficient for purposes of this revocation, and said revocation of license 1095 shall be deemed resulting from such conviction(s) as are affirmed on appeal.  
(Emphasis added.)

4. Appellant has argued to the Board that his felony criminal convictions were "set aside" by Maricopa County Superior Court order in 1995; and, therefore, pursuant to the terms of the Board's 1988 Consent Order, Board license No. 1095 should have been reinstated, without the Board's requiring him to pass a medical competency examination; and, the Board's 1988 license revocation order should have been vacated.

5. The Board finds that the legal and factual arguments of Applicant, as described in paragraph 4 above, are without merit. The decisions of the Arizona Court of Appeals in State v. MacGillivray, 162 Ariz. 539, 785 P.2d 59 (App. 1990) and State v. MacGillivray, Arizona Court of Appeals, Div. One, Dept. E, Case

No. 1 CA-CR91-0570 (Memorandum Decision, dated May 19, 1992) and State v. MacGillivray, Arizona Court of Appeals, Div. One, Dept. D, Case No. 1 CA-CR94-0773-PR (Memorandum Decision, dated Oct. 26, 1995), establish that two of the original twelve felony convictions concerning Applicant were upheld on appeal.

6. Applicant filed in Superior Court for Maricopa County, in Case No. CR-164338 an application for restoration of civil rights. Presumably the application was based upon A.R.S. § 13-906 (application by persons discharged from prison). By order dated March 28, 1995, and signed by John Trombino, Judge Pro Tem, Maricopa County Superior Court, it was ordered:

- A) vacating judgment of guilt and dismissing charges
- B) restoring civil rights
- C) restoring the right to possess firearms

7. The aforementioned March 28, 1995, Superior Court order for restoration of civil rights to Applicant does not constitute the setting aside or reversal of Applicant's felony conviction "on appeal" as required by Board Consent Order, dated October 19, 1988, in order for Applicant to qualify for reinstatement of his previous Board license. Instead, the Superior Court order of March 28, 1995, merely constitutes a restoration of civil rights, pursuant to A.R.S. §§ 13-904, -905, -906, -907, -908, and -912.

8. At its public meeting on May 13, 1995, the Board reviewed the application file of the Applicant and voted to inform the Applicant that, pursuant to the requirements of A.R.S.

§ 32-1822(A) (qualifications for license as an osteopathic physician), Applicant would have to complete and successfully pass the Special Purpose Examination ("SPEX") administered by the Federation of State Medical Boards. Applicant was advised of the Board's decision and instructions by letter dated May 17, 1995 and signed by Robert J. Miller, Ph.D., former Board executive director.

9. Because Applicant is not currently licensed as an osteopathic physician in another state, he was required by statute to sit for the licensing examination, pursuant to A.R.S. § 32-1822(A)(4).

10. Applicant took the SPEX examination administered in June of 1995 and received a score of 69. Pursuant to Board administrative rule, A.A.C. R4-22-104(A) the applicant must receive a grade of 75% or above.

11. Applicant was informed that he failed the SPEX examination. Thereafter Appellant requested that he be allowed to take the SPEX examination again; and, by letter dated October 1995, from the Board's administrative assistant, Applicant was informed that the Board approved his request. However, there is no subsequent record of Applicant applying for and again taking the SPEX examination.

12. The Board subsequently requested the administrators of the SPEX examination to recheck the Applicant's score; and, the Board's executive director received confirmation of Applicant's failing score, i.e., 69%.

13. At the Board's public meeting on November 29, 1995, the Board voted to deny the Applicant's request for osteopathic physician license based upon his failure to obtain a passing score (75%) on the SPEX examination as required by A.R.S. § 32-1822(A)(4).

14. Applicant filed a timely request for hearing on denial of license application, pursuant to A.R.S. § 41-1065. Thereafter the matter was noticed for hearing; and, Applicant with legal counsel, Stanley D. Murray, appeared before the Board for a hearing on denial of license application on February 2, 1996. After hearing testimony, reviewing the documentary evidence and hearing the arguments of counsel, the Board voted unanimously to affirm the denial of license application.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction to consider the pending osteopathic physician license application and to conduct an administrative hearing, pursuant to A.R.S. § 32-1800, et seq., and A.R.S. § 41-1065.

2. Pursuant to A.R.S. § 41-1065, the burden of proof is on the Applicant to demonstrate his qualifications to be licensed as an osteopathic physician in the State of Arizona.


3. Applicant has not met his burden of proof because he has not satisfied the mandatory statutory requirement to pass the Board's medical competency examination, i.e., competency A.R.S. § 32-1822(A)(4).

ORDER

IT IS HEREBY ORDERED that the application of Ian D. MacGillivray, D.O., to obtain a license to practice osteopathic medicine in the State of Arizona is denied.

ISSUED AND EFFECTIVE this 1st day of April, 1996.

BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

  
ANN MARIE BERGER  
Executive Director  
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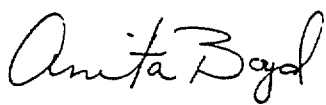
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